IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11338 of 2002

and

SPECIAL CIVIL APPLICATION No 11340 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KARJAN MUNICIPALITY

Versus

SHASHIKANT KAMALAKAR SHUKLA

Appearance:

1. Special Civil Application No. 11338 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR ASHOK N PARMAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 16/07/2004

COMMON ORAL JUDGEMENT

1.0. In both these petitions, the petitioner - Karjan Municipality by way of this petition has challenged the

judgment and award of the Labour Court in Reference [L.V.C.] No. 880 of 1999 dated 3rd June, 2002, whereby the Labour Court has directed the petitioner Municipality to reinstate the respondents on their original post with 40% backwages and costs of Rs.1000.

2.0. The case of the petitioner - Municipality is that the respondents were appointed as Clerk vide Office Order dated 24th April, 1998 on temporary basis for a period of three months on a fixed salary of Rs.2,100=00. The said order is annexed at Annexure-B to the petition. The respondents were further continued for a period of three months and ultimately the District Collector, Baroda initiated proceedings under Section 258 of the Municipalities Act and suspended the Resolution of the petitioner - Municipality appointing the respondents on temporary basis. Pursuant to the order of the Collector, Baroda the respondents were relieved from service w.e.f. 25th February, 1999. It is the case of the petitioner - Municipality that on 23rd March, 1999 the Collector, Baroda has restrained them from implementing the Resolution dated 5th August, 1998 and 21st November, 1998.

2.1. The present respondents approached the Labour Court by way of Reference being Reference [L.C.V.] No. 882 of 1999, wherein the petitioner - Municipality filed their reply on 12th July, 2001. Inspite of the specific contention by the petitioner - Municipality that the respondents were appointed on temporary basis and they were relieved, in view of the order passed by the Collector, Baroda, the Labour Court had directed reinstatement on their original post with 40% backwages.

2.2. Being aggrieved by the said order, the petitioner - Municipality has approached this Court. This Court, while admitting the petition on 27th December, 2002, granted stay against backwages and has refused the request for staying the reinstatement in service and it was stated by the Chief Officer, that the respondents will be reinstated in service as per the impugned award on or before 1st January, 2003.

2.3. Mr. Patel learned advocate for the petitioner Municipality submitted that order at annexure-A was passed without considering the appointment order which was for a fixed period and, therefore, in view of the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act, it is not retrenchment and, therefore, Section 25-F would be the applicable.

2.4. Mr. Patel for the petitioner Municipality submitted that the appointments of the respondents were in clear violation of the prescribed procedure. He further submitted that as per the provisions of Municipalities Act, appointment can be made only after approval of the Director of the Municipality and after fulfilling the prescribed procedure including inviting applications though the employment exchange. Thus, the appointments of the respondents were back door entry, which cannot be regularized under the guise of provisions of Section 25-F of the Industrial Disputes Act.

2.5. Mr. Patel also contented that the Labour Court has committed error in ignoring the fact that the respondents were not regularized, in view of the order passed by the Collector, Baroda under the Municipalities Act and the Labour Court cannot sit in appeal over the decision of the Collector. Mr. Patel has further contended that because of the abolition of octroi, there are surplus staff and to accommodate those surplus staff, temporary staff cannot be continued.

2.6. In view of the above, Mr. Patel has relied upon the decisions of the Division Bench of this Court in the case of Halvad Nagarpalika & Ors. v, Jani Dipakbhai Chandravadanbhai reported in {2003) 2 G.H.J. p.397, wherein it has been held that, in view of the judgment of Hon'ble Supreme Court, provisions of Section 25-F cannot be invoked in the case of daily wage employees whose appointments are without following the due procedure laid down in statutory rules of recruitment policies and, therefore, the order passed by the High Court is required to be quashed and set aside.

The Division Bench has further held as under:-

"12. Mr. Vyas has further relied on the decision of the Hon'ble Supreme Court in the case of HIMANSHU Vs. STATE OF BIHAR & ORS. - (1997) 1 S.C.C. p. 591, wherein the main grievance of the petitioners was that termination of the services was in violation of Section 25-F of the Industrial Disputes Act, 1947. The Hon'ble Supreme Court has observed that the persons, whose services were terminated, were not appointed to the posts in accordance with the rules but were engaged on the basis of need of work. They were temporary employees working on daily wages and in those

circumstances, their disengagement from service could not be construed to be a retrenchment under the Industrial Disputes Act. It was further hold by the Hon'ble Supreme Court that the concept of retrenchment therefore, cannot be stretched to such an extent as to cover the said employees. While negativing the contention of the petitioners in that case that the termination of their services was arbitrary, the Hon'ble Supreme Court has hold that they were only daily wage employees and had no right to the posts and hence their disengagement was not arbitrary."

2.7. Mr. Patel has also relied on the Full Bench decision of this Court rendered in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union delivered in Special Civil Application No. 5746 of 1999 and its allied matters dated 9th July, 2004, wherein it has been observed as under :-

"Even if it is held that the Labour Court/ Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas / Municipalities / Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is depricated in so many words in the judgment referred by us. The Panchayats, Municipalities, Municipal Corporation or Government Corporations as well as Government establishments are facing severe financial crisis only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organizations and the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at

the cost of public exchequer. We are conscious of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, We do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines:-

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workman who have continued for years as temporary employee, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularization can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/ rules / circulars within the budgetary provisions."

2.8. As against that Mr. Parmar learned advocate for the respondents submitted that the order passed by the petitioner - Municipality is in violation of provisions of Section 25-F of the Industrial Disputes Act, and the same is required to be quashed and set aside.

3.1. The appointment of the respondents was for specific period, therefore, in view of the provisions of Section 2 (oo) (bb), it is not a retrenchment. Therefore, the petitioner-Municipality was justified in relieving the respondents.

3.2. In view of the Collector's order, the petitioner-Municipality was bound to follow the direction issued by the Collector, Baroda, since those directions were issued in consonance with the provisions of Recruitment Rules.

3.3. Even otherwise, also in view of the law laid down by this Court, the order of Labour Court is required to be quashed and set aside.

3.4 Looking to the facts narrated hereinabove and in view of the decisions referred above, in my opinion, the both the petitions are required to be allowed. Accordingly, the petitions are allowed. The order of the Labour Court is quashed and set aside and it is held that the order dated 25th February, 1999 passed by the Nagar Palika relieving the respondents pursuant to the order of the Collector is legal and proper. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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